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AMENDED IN ASSEMBLY MAY 31, 2013
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AMENDED IN ASSEMBLY APRIL 30, 2013
AMENDED IN ASSEMBLY APRIL 8, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 7

Introduced by Assembly Member Wieckowski

December 3, 2012

An act to amend Sections 3108, 3203, 3213, and 3215 of, to add Sections 3017, 3203.1, 3203.2, and 3215.5 to, and to add Article 3 (commencing with Section 3150) to Chapter 1 of Division 3 of, the Public Resources Code, relating to oil and gas.

LEGISLATIVE COUNSEL'S DIGEST

AB 7, as amended, Wieckowski. Oil and gas: hydraulic fracturing.

(1) Under existing law, the Division of Oil, Gas, and Geothermal Resources, or the division, in the Department of Conservation, regulates the drilling, operation, maintenance, and abandonment of oil and gas wells in the state. The State Oil and Gas Supervisor supervises the drilling, operation, maintenance, and abandonment of wells and the operation, maintenance, and removal or abandonment of tanks and facilities related to oil and gas production within an oil and gas field regarding safety and environmental damage. Existing law requires an operator of a well, before commencing the work of drilling the well, to file with the supervisor or the district deputy a written notice of intention

to commence drilling, and prohibits the commencement of drilling until approval is given by the supervisor or the district deputy. Existing law requires the operator of a well to keep, or cause to be kept, a careful and accurate log, core record, and history of the drilling of the well. Within 60 days after the date of cessation of drilling, rework, or abandonment operations, the owner or operator is required to file with the district deputy certain information, including the history of work performed.

This bill would revise that procedure to instead require the operator to file an application before commencing drilling and would prohibit drilling until approval or denial of the application is given by the supervisor or district deputy within 30 working days. The bill would require, on and after January 1, 2014, additional information to be included in the application, including information regarding the chemicals, if any, to be injected into a well. This bill would additionally require the operator prior to drilling, redrilling, or deepening operations to submit proof to the supervisor that the applicable regional water quality control board has approved the disposal method and location of wastewater disposal for the well.

This bill would define, among other things, hydraulic fracturing and hydraulic fracturing fluid. The bill would require the owner or operator of a well to provide to the supervisor, or to arrange with the supplier to provide to the supervisor, specific information relating to hydraulic fracturing as a part of the history of the drilling of the well. The bill would, on or before January 1, 2015, require the division, in consultation with the Office of Environmental Health Hazard Assessment and the Department of Toxic Substances Control, to establish a process through which all chemicals used in hydraulic fracturing treatments may be studied or reviewed. The bill would provide that a supplier who provides information to the supervisor relating to hydraulic fracturing may, at the time of submission, submit to the supervisor a claim in writing that some or all of the information is protected trade secret information, as specified. The bill would require a supplier claiming trade secret protection for the chemical composition of additives used in the hydraulic treatment to disclose the composition to the division, in conjunction with a hydraulic fracturing treatment notice, but would, except as specified, prohibit those with access to the trade secret from disclosing it. Because this bill would create a new crime, it would impose a state-mandated local program.

This bill would require the supervisor, on or before January 1, 2014, and annually thereafter, to transmit to the Legislature a comprehensive report on hydraulic fracturing in the exploration and production of oil and gas resources in the state, as specified.

(2) Existing law requires the supervisor, on or before the first day of October of each year, to make public a report on specified information.

This bill would additionally require the supervisor to include information on the origin and total amount of freshwater used in each county for the production of oil and gas production, the disposal of wastewater from oil and gas production in each county, and the well casing failures in each county.

This bill would require the operator of a well, at least 30 days prior to commencing a hydraulic fracturing treatment, as defined, to provide a copy of the approved hydraulic fracturing treatment permit to ~~every~~ *specific* surface property ~~owner~~ *owners*. The bill would authorize those property owners to request the applicable regional water quality control board to perform water quality sampling and testing on any water well suitable for drinking or irrigation purposes, as specified. The bill would require a notice of intent to drill, rework, or deepen a well where hydraulic fracturing will occur to include specified information. Because a violation of these requirements is a crime, this bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Hydraulic fracturing has been used in California for several
4 decades to extract oil and gas and is likely to be used more
5 extensively as the industry seeks to develop additional oil-bearing
6 and gas-bearing formations.

7 (b) The Division of Oil, Gas, and Geothermal Resources in the
8 Department of Conservation, which has the obligation to protect

1 public health and the natural resources of the state, including
2 groundwater resources, has the authority to regulate all oil and
3 natural gas drilling in the state, but currently does not require the
4 disclosure of pertinent information regarding hydraulic fracturing
5 or ascertain all specific types of production and exploration taking
6 place at permitted wells.

7 (c) Given California's geologic, seismic complexity, and its
8 finite and significantly compromised water resources, it is
9 important to collect basic information about natural resource
10 production processes. The state and the public should know when
11 and where hydraulic fracturing is occurring and what chemicals
12 are being used in the process.

13 SEC. 2. Section 3017 is added to the Public Resources Code,
14 to read:

15 3017. "Hydraulic fracturing" means a well stimulation
16 treatment that may include the application of hydraulic fracturing
17 fluids into an underground geologic formation in order to create
18 fractures in the formation, thereby causing or improving the
19 production of oil or gas from a well.

20 SEC. 3. Section 3108 of the Public Resources Code is amended
21 to read:

22 3108. (a) On or before the first day of October of each year
23 the supervisor shall make public, for the benefit of all interested
24 persons, a report in writing showing:

25 (1) The total amounts of oil and gas produced in each county
26 in the state during the previous calendar year.

27 (2) The total cost of the division for the previous fiscal year.

28 (3) The total amount delinquent and uncollected from any
29 assessments or charges levied pursuant to this chapter.

30 (4) The origin and total amount of freshwater used in each
31 county for oil and gas production during the previous calendar
32 year.

33 (5) The surface and underground destinations and total amount
34 of disposed wastewater from oil and gas production in each county
35 during the previous calendar year.

36 (6) The total number of well casing failures in each county, the
37 exact location of these wells, the reason for the failures, and at
38 what point the failures occurred, such as during well completion,
39 well stimulation, or well production, during the previous calendar
40 year.

1 (b) The report shall also include other information as the
2 supervisor deems advisable.

3 SEC. 4. Article 3 (commencing with Section 3150) is added
4 to Chapter 1 of Division 3 of the Public Resources Code, to read:

5
6 Article 3. Hydraulic Fracturing
7

8 3150. "Chemical Abstracts Service" means the division of the
9 American Chemical Society that is the globally recognized
10 authority for information on chemical substances.

11 3151. "Chemical Abstracts Service (CAS) number" means the
12 unique identification number assigned to a chemical by the
13 Chemical Abstracts Service.

14 3153. "Hydraulic fracturing fluid" includes water or other
15 carrier fluids that may be mixed with physical and chemical
16 additives for the purpose of hydraulic fracturing. The additives
17 may, but are not required to, serve additional purposes beyond the
18 transmission of hydraulic pressure to the geologic formation.
19 Additives may be of any phase and may include proppants.

20 3154. "Proppants" are materials inserted or injected into the
21 formation that are intended to prevent newly created or enhanced
22 fractures from closing.

23 3155. "Supplier" means an entity performing hydraulic
24 fracturing or a person supplying an additive or proppant directly
25 to the operator for use in hydraulic fracturing on a well.

26 3156. If hydraulic fracturing is performed on a well, the owner
27 or operator of the well shall provide to the supervisor, or shall
28 arrange with the supplier to provide to the supervisor, and shall
29 include in the well history maintained pursuant to Section 3213,
30 all of the following information, except for information claimed
31 as a trade secret pursuant to subdivision (c) of Section 3203:

32 (a) A complete list of the chemical constituents formulated for
33 use in the hydraulic fracturing fluid that is injected into the well
34 and each chemical's associated CAS numbers. Where the CAS
35 number does not exist, the operator or supplier may provide another
36 unique identifier where available.

37 (b) The purpose of each additive contained in the hydraulic
38 fracturing fluid.

39 (c) The estimated total amount of the additives in the hydraulic
40 fracturing fluid.

1 (d) The estimated maximum concentration of each chemical
2 constituent in the additive as disclosed on a material safety data
3 sheet in the hydraulic fracturing fluid expressed as a percentage
4 by mass.

5 (e) The estimated maximum concentration of each chemical
6 constituent disclosed on a material safety data sheet in the hydraulic
7 fracturing fluid, expressed as a percentage by mass.

8 (f) The amount and source of any water suitable for irrigation
9 or domestic purposes used to conduct the hydraulic fracturing
10 treatment of the well.

11 (g) The amount and disposition of water and hydraulic fracturing
12 fluid recovered from each well where hydraulic fracturing occurred
13 prior to the reporting of the water produced pursuant to Section
14 3227.

15 (h) Any radiological components or tracers injected into the
16 well as part of the hydraulic fracturing process and a description
17 of the recovery method, if any, for those components or tracers,
18 the recovery rate, and the disposal method for recovered
19 components or tracers.

20 3157. On or before January 1, 2015, the division, in
21 consultation with the Office of Environmental Health Hazard
22 Assessment and the Department of Toxic Substances Control, shall
23 establish a process through which all chemicals used in hydraulic
24 fracturing treatments may be studied or reviewed, a list containing
25 any restricted or prohibited toxic chemicals, and a list containing
26 any restricted or prohibited locations deemed extremely vulnerable
27 to a spill or release of chemicals.

28 SEC. 5. Section 3203 of the Public Resources Code is amended
29 to read:

30 3203. (a) The operator of any well, before commencing the
31 work of drilling the well, shall file with the supervisor or the district
32 deputy an application to commence drilling. Drilling shall not
33 commence until approval or denial of the application is given by
34 the supervisor or the district deputy within 30 working days. If
35 operations have not commenced within one year of receipt of the
36 application, the application shall be deemed canceled. The
37 application shall contain the pertinent data the supervisor requires
38 on printed forms supplied by the division or on other forms
39 acceptable to the supervisor. The supervisor may require other
40 pertinent information to supplement the application.

1 (b) (1) On and after January 1, 2014, in addition to the
2 information required in the application under subdivision (a), the
3 application shall additionally include all of the following
4 information:

5 (A) The type of exploration and production techniques that the
6 operator will use at the well or wells.

7 (B) A complete list of the chemicals, if any, that will be injected
8 into the well for hydraulic fracturing or other production
9 enhancement methods in the exploration or production process or
10 processes. This list of chemicals shall include all of the following
11 information:

12 (i) The name of the chemical.

13 (ii) The purpose of the chemical in the production or exploration
14 process.

15 (iii) The Chemical Abstract Service numbers for the chemical.

16 (iv) The estimated total amount of the chemical used.

17 (2) If any of the information required pursuant to paragraph (1)
18 changes over the course of the exploration and production process,
19 the operator shall immediately notify the supervisor.

20 (c) (1) A supplier may claim trade secret protection for the
21 chemical composition of additives pursuant to Section 1060 of the
22 Evidence Code, or the Uniform Trade Secrets Act (Title 5
23 (commencing with Section 3426) of Part 1 of Division 4 of the
24 Civil Code).

25 (2) If a supplier believes that information regarding a chemical
26 constituent of a hydraulic fracturing fluid is a trade secret, the
27 supplier shall nevertheless disclose the information to the division
28 in conjunction with a hydraulic fracturing treatment notice, if not
29 previously disclosed, within 30 days following cessation of
30 hydraulic fracturing on a well, and shall notify the division in
31 writing of that belief.

32 (3) The supplier is not required to disclose trade secret
33 information to the operator.

34 (4) This subdivision does not permit a supplier to refuse to
35 disclose the information required pursuant to this section to the
36 division.

37 (5) To comply with the public disclosure requirements of this
38 section, the supplier shall indicate where trade secret information
39 has been withheld and the specific name of a chemical constituent

1 shall be replaced with the chemical family name or similar
2 descriptor associated with the trade secret chemical information.

3 (6) Except as provided in subparagraph (B) of paragraph (8),
4 the division shall protect from disclosure any trade secret
5 designated as such by the supplier, if that trade secret is not a public
6 record.

7 (7) The supplier shall notify the division in writing within 30
8 days of any changes to information provided to the division to
9 support a trade secret claim.

10 (8) Upon receipt of a request for the release of information to
11 the public, which includes information the supplier has notified
12 the division is a trade secret and is not a public record, the
13 following procedure applies:

14 (A) The division shall notify the supplier of the request in
15 writing by certified mail, return receipt requested.

16 (B) The division shall release the information to the public, but
17 not earlier than 60 days after the date of mailing the notice of the
18 request for information, unless, prior to the expiration of the 60-day
19 period, the supplier commences an action in an appropriate court
20 for a declaratory judgment that the information is subject to
21 protection or for a preliminary injunction prohibiting disclosure
22 of the information to the public and provides notice to the division
23 of that action.

24 (9) (A) Except as provided in subparagraph (B) of paragraph
25 (8), trade secret information is not a public record and shall not be
26 disclosed to anyone except to an officer or employee of the
27 division, the state, local air districts, or the United States, in
28 connection with the official duties of that officer or employee, to
29 a health professional, under any law for the protection of health,
30 or to contractors with the division or the state and its employees
31 if, in the opinion of the division, disclosure is necessary and
32 required for the satisfactory performance of a contract, for
33 performance of work, or to protect health and safety.

34 (B) A health professional may share trade secret information
35 with other persons as may be professionally necessary, including,
36 but not limited to, the patient and other health professionals.
37 Confidentiality of the trade secret information shall be maintained.
38 ~~The holder of the trade secret may request a confidentiality~~
39 ~~agreement consistent with the requirements of this subdivision to~~
40 ~~whom this information is disclosed as soon as circumstances~~

1 ~~permit~~. If necessary, a procedure for timely disclosure by the
2 division in the event of an emergency shall be identified.

3 (10) For the purposes of this subdivision, the definitions
4 provided in Article 3 (commencing with Section 3150) shall apply
5 when appropriate.

6 (d) After the completion of any well, this section also applies,
7 as far as it may be applied, to the deepening or redrilling of the
8 well, an operation involving the plugging of the well, or any
9 operations permanently altering in any manner the casing of the
10 well. The number or designation of a well, and the number or
11 designation specified for a well in an application filed as required
12 by this section, shall not be changed without first obtaining a
13 written consent of the supervisor.

14 (e) If an operator fails to comply with an order of the supervisor,
15 the supervisor may deny approval of proposed well operations
16 until the operator brings its existing well operations into
17 compliance with the order. If an operator fails to pay a civil penalty,
18 remedy a violation that it is required to remedy to the satisfaction
19 of the supervisor pursuant to an order issued under Section 3236.5,
20 or to pay any charges assessed under Article 7 (commencing with
21 Section 3400), the supervisor may deny approval to the operator's
22 proposed well operations until the operator pays the civil penalty,
23 remedies the violation to the satisfaction of the supervisor, or pays
24 the charges assessed under Article 7 (commencing with Section
25 3400).

26 (f) This section does not apply to routine pressure tests to
27 monitor the integrity of wells and well casings.

28 (g) Prior to the approval of the commencement of any drilling,
29 redrilling, or deepening of a well, the operator shall submit written
30 proof to the supervisor that a waste discharge report has been filed
31 with the applicable regional water quality control board pursuant
32 to Section 13260 of the Water Code for the disposal of the
33 wastewater for the well.

34 SEC. 6. Section 3203.1 is added to the Public Resources Code,
35 to read:

36 3203.1. (a) At least 30 days prior to commencing a hydraulic
37 fracturing treatment, the operator shall provide a copy of the
38 approved hydraulic fracturing treatment permit to every surface
39 property ~~owner~~. *owner or authorized agent of that owner whose*
40 *property line location is one of the following:*

1 (1) *Within a 1,500 foot radius of the wellhead.*
2 (2) *Within 500 feet from the horizontal projection of all*
3 *subsurface portions of the designated well to the surface.*

4 (b) (1) A property owner notified pursuant to subdivision (a)
5 may request the applicable regional water quality control board to
6 perform water quality sampling and testing on any water well
7 suitable for drinking or irrigation purposes and on any surface
8 water suitable for drinking or irrigation purposes as follows:

9 (A) Baseline measurements prior to the commencement of the
10 hydraulic fracturing treatment.

11 (B) Followup measurements after the hydraulic fracturing
12 treatment on the same schedule as the pressure testing of the well
13 casing of the hydraulically fractured well.

14 (2) The regional water quality control board may contract with
15 an independent third party that adheres to board-specified standards
16 and protocols to perform the water sampling and testing.

17 (3) The regional water quality control board shall retain and
18 archive sufficient samples collected pursuant to this subdivision
19 to permit a reasonable number of additional analyses.

20 SEC. 7. Section 3203.2 is added to the Public Resources Code,
21 to read:

22 3203.2. A notice of intent to drill, rework, or deepen a well
23 where hydraulic fracturing will occur shall include all of the
24 following information:

25 (a) A description of the estimated quantity of water planned to
26 be used in the hydraulic fracturing process.

27 (b) The source or sources of water to be used.

28 (c) *A groundwater monitoring plan to the appropriate regional*
29 *water quality control board. The groundwater monitoring plan*
30 *shall include, at a minimum, all of the following information:*

31 (1) *The current water quality of the groundwater basin through*
32 *which the well will be drilled that is sufficient to characterize the*
33 *quality of the aquifer and identify the zone of influence of the*
34 *proposed well.*

35 (2) *Water quality data or a plan to obtain data for monitoring*
36 *wells regarding the presence and concentration of the constituents*
37 *to be used in, or that can be influenced by, the drilling process for*
38 *the period of active use.*

1 (3) *An emergency monitoring plan that will be implemented in*
2 *the case of well casing failure or any other event which has the*
3 *potential to contaminate groundwater.*

4 (d) *Water quality monitoring data shall be submitted*
5 *electronically to the State Water Resources Control Board*
6 *geotracker database and any public data registry identified by the*
7 *division for disclosure of hydraulic fracturing data.*

8 (e) *This section shall not apply if the appropriate regional water*
9 *quality control board confirms that the proposed well will not*
10 *penetrate or will not be located within the zone of influence of an*
11 *aquifer that is designated for a beneficial use.*

12 SEC. 8. Section 3213 of the Public Resources Code is amended
13 to read:

14 3213. The history shall show the location and amount of
15 sidetracked casings, tools, or other material, the depth and quantity
16 of cement in cement plugs, the shots of dynamite or other
17 explosives, the results of production and other tests during drilling
18 operations, and the information required pursuant to Section 3156.

19 SEC. 9. Section 3215 of the Public Resources Code is amended
20 to read:

21 3215. (a) Within 60 days after the date of cessation of drilling,
22 rework, hydraulic fracturing, or abandonment operations, or the
23 date of suspension of operations, the owner or operator shall file
24 with the district deputy, in a form approved by the supervisor, true
25 copies of the log, core record, and history of work performed, and,
26 if made, true and reproducible copies of all electrical, physical, or
27 chemical logs and tests. Upon a showing of hardship, the supervisor
28 may extend the time within which to comply with this section for
29 a period not to exceed 60 additional days.

30 (b) (1) The supervisor shall post the information provided
31 pursuant to Section 3156 and that is not claimed as a trade secret
32 pursuant to subdivision (c) of Section 3203 to existing Internet
33 maps on the division's Internet Web site, and shall make that
34 information available to the public in a way that the information
35 is associated with each specific well where chemicals are injected
36 for purposes of hydraulic fracturing.

37 (2) For purposes of complying with the posting requirements
38 of paragraph (1), the supervisor may use an existing public Internet
39 Web site administered by the Ground Water Protection Council

1 or the Interstate Oil and Gas Compact Commission if all of the
2 following are met:

3 (A) The information is transmitted and posted to the public
4 Internet Web site in a form and manner approved by the supervisor
5 and includes the information provided to the supervisor pursuant
6 to Section 3156, except for trade secret information pursuant to
7 subdivision (c) of Section 3203.

8 (B) There is an electronic link from the wells represented on
9 the division’s existing internet maps that allows members of the
10 public to view the information about specific wells based on their
11 location.

12 (C) On and after January 1, 2014, the Chemical Disclosure
13 Registry allows for the division staff and the public to aggregate
14 data and search and sort the registry for information by geographic
15 area, ingredient, Chemical Abstract Service number, time period,
16 and operator.

17 (D) Members of the public are permitted to copy, reproduce,
18 modify, republish, upload, post, transmit, or distribute the
19 information without restriction.

20 SEC. 10. Section 3215.5 is added to the Public Resources Code,
21 to read:

22 3215.5. (a) Notwithstanding Section 10231.5, on or before
23 January 1, 2014, and annually thereafter, the supervisor shall
24 prepare and transmit to the Legislature a comprehensive report
25 regarding hydraulic fracturing in oil and gas exploration and
26 production in California, using the information provided pursuant
27 to Section 3156. Where the information involves trade secret
28 protection, the supervisor shall only use information provided
29 pursuant to paragraph (5) of subdivision (c) of Section 3203 to
30 complete the report. The report shall additionally include, but is
31 not limited to, the following relevant information:

32 (1) Aggregated data detailing the volumes of hydraulic fracturing
33 fluid used during hydraulic fracturing, identifying whether it is
34 water suitable for irrigation or domestic purposes, water not
35 suitable for irrigation or domestic purposes, or something other
36 than water.

37 (2) Aggregated data detailing the disposition of hydraulic
38 fracturing fluid used to conduct hydraulic fracturing.

1 (3) Aggregated data detailing the volumes of each chemical
2 used in hydraulic fracturing treatments in the state, in each county,
3 and by each company, during the preceding year.

4 (4) The number of emergency responses to a spill or release.

5 (5) The number of well failures.

6 (6) Based on a representative sampling of information submitted
7 to the division pursuant to Section 3156 and subdivision (c) of
8 Section 3203, the percentage of chemical information withheld
9 within the representative sample as trade secret information.

10 (b) A report to the Legislature pursuant to subdivision (a) shall
11 be submitted in compliance with Section 9795 of the Government
12 Code.

13 SEC. 11. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.